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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,565	12/12/2003	Magdalena Faisst	3201-363 (D4700-00377)	3930

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/735,565	Applicant(s) FAISST, MAGDALENA ed	
	Examiner Charles E. Phillips	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/7/04</u> . | 6) <input type="checkbox"/> Other: ____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 9-13 rejected under 35 U.S.C. 102(b) as being anticipated by Fabian.

See Fig. 1 and the claim where a “combined hand shower adjustable holder and article holder” is set forth. Re: claim 2; see the top and bottom views of Figs 3-4. Re: claims 12-13, the lower wall bracket “engages” the auxiliary guide as the showerhead guide and the auxiliary guide appear above and below the lower wall bracket and the claim 13 “designed for joining” is met by this structure. Re: claim 5, the respective guide orientations are seen in Figs.1-2. Re: claim 11, any bracket “may be” attached “anywhere along its length”.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The “guide groove “lacks antecedent basis in claim 14, in claim 6, lines 2-3 ,the and/or clause fails to particularly point out the invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3751

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fabian as applied supra. To provide for the respective guides to differ would have constituted an obvious expedient of choice in design in the absence of some unexpected result.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabian, as applied supra, in view of 8506749.


See the use of grooves 23 of Fig. 4. To provide for this design in the Fabian device would have been obvious to the ordinary artisan as the use of perfecting features of one shower guide in that of another would have been prima facie obvious to one of ordinary skill. Re: claim 8; see the right and left elements 24 of Figs 5 and 6 of the latter.

Claims 1-10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glunk.

See holder 10 and the auxiliary guides of Fig. 4 or paragraph 48, where slots 14 maybe used for installing holders. These claims are clearly anticipated by the structure and operation taught here.

It is requested that applicant provide a copy of DE 19650000.

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number (571) 272-4893.


Charles E. Phillips
Primary Examiner